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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COAST AUTONOMOUS LLC, a California Limited Liability Company, PHOENIX WINGS LTD., a United Kingdom Company, and PIERRE LEFEVRE an individual,

Plaintiffs,

v.

GLOBAL RESOURCES MANAGEMENT CONSULTANCY INC. a New York Corporation, MERIDIAN AUTONOMOUS INC. a New York Corporation, MERIDIAN USA, INC., a Florida corporation, and DOES 1-10, inclusive,

Defendants.

Case No. 2:17-cv-02992-DSF (JCx)

DEFENDANTS' BRIEF ON THEIR MOTION TO
(1) DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION (FED. R. CIV. P. 12(B)(1));
(2) DISMISS FOR FAILURE TO STATE A CLAIM (FED. R. CIV. P. 12(B)(6));
(3) DISMISS FOR LACK OF PERSONAL JURISDICTION (FED. R. CIV. P. 12(B)(2));
(4) DISMISS FOR IMPROPER VENUE (FED. R. CIV. P. 12(B)(3)) AND/OR
(5) TRANSFER (28 U.S.C. § 1406(A))

HEARING:
October 23, 2017, 1:30 p.m.
Courtroom 7D

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I. INTRODUCTION

Plaintiffs' first amended complaint is an attempt to distract from the real issue between the parties—Plaintiffs' theft of Defendants' property—and to delay the lawsuit in New York between the parties addressing that issue. Plaintiffs admit in the first amended complaint that Plaintiffs took from Defendant Meridian's facilities "a number of microprocessors" without authorization. Plaintiffs try to distract from their conduct by claiming in the first amended complaint that they are unaware of any other property Plaintiffs "may have inadvertently removed" from Defendants' facilities. But Plaintiffs' claims of ignorance are unfounded—Defendants specifically identified physical items stolen by Plaintiffs in their complaint in the New York action and Plaintiffs' own emails identify the items at issue.

The fact that Plaintiffs' claims are an exercise in deflection and distraction is evidenced by their substantive weakness. At the heart of Plaintiffs' first amended complaint are their claims for declaratory judgment related to "certain intellectual property" and "physical property belonging to [Defendant] Meridian." But Plaintiffs fail to identify any specific "intellectual" or "physical" property about which they ask this Court to issue a declaratory judgment. Obviously, if Plaintiffs had any rights to the alleged "intellectual" and "physical" property, the first step would be for them to specifically identify any such property.

Plaintiffs' other claims are no better. Plaintiffs claim that Defendants committed "intentional interference with prospective economic relations" but fail to identify any actual "economic benefit" they might lose due to the alleged interference. And Plaintiffs' Lanham Act claim fails because they cannot truthfully allege that they are capable of delivering fully autonomous vehicles to customers.

Perhaps the most obvious sign that this case is designed to distract from the New York case—in which the issue of Plaintiffs' theft is squarely at issue—is Plaintiffs' failure to dispute that this case should be transferred to New York for convenience. As the Court is aware, Defendants' filed a motion to transfer under 28 U.S.C. § 1404 to which Plaintiffs did not respond. (Docs. 12, 13, 14, 16 and 17). Under the Local Rules, that motion should be deemed granted. But even if it is not, personal jurisdiction over Defendants is not proper in this Court and the case should be transferred to New York for consolidation with the case pending there.

II. BACKGROUND

As recited in Plaintiffs' first amended complaint, Defendant Meridian is in the business of developing autonomous vehicle technology. (Doc. 18; FAC ¶ 19) [1]. Defendant Meridian is part of Defendant Global Resources' autonomous vehicle initiative. In April 2016, Defendant Global Resources entered into a non-binding term sheet with Plaintiff Lefevre to explore whether Levfevre and his company, Plaintiff Phoenix Wings, could make a useful contribution to Global Resources' autonomous vehicle project. (FAC ¶ 36). As Global Resources began to investigate Lefevre's and Phoenix Wings' operations, however, it became clear that they were in desperate need of substantial technical, logistical, and financial support from Defendant Global Resources to stay afloat. Among other things, Defendants Global Resources and Meridian provided financial assistance to Plaintiffs by employing Plaintiff Phoenix Wings to provide certain services and hiring Plaintiff Lefevre, non-party Cyril Royere, and others to work on Meridian's autonomous vehicle project. (FAC ¶¶41-42). Global Resources and Meridian also provided research and development facilities in Clearwater, Florida for Lefevre and supplied the physical equipment needed for the autonomous vehicle effort. (FAC ¶ 43). Among other things, Global Resources and Meridian provided laptops, microprocessors, and other equipment (FAC ¶ 43) along with technical and logistical support to Plaintiffs Lefevre and Phoenix Wings.

[1] All references to "FAC" are to the first amended complaint.

But Defendants Global Resources and Meridian eventually discovered that Plaintiffs' software was based on pirated source code and that Plaintiffs Lefevre and Phoenix Wings had no rights to any worthwhile intellectual property. Global Resources nonetheless made an offer pursuant to the non-binding term sheet, but Defendants Lefevre and Phoenix Wings rejected it. (FAC ¶¶ 45-49).

Plaintiffs Lefevre and Phoenix Wings then vacated Defendant Meridian's Clearwater facility and removed Meridian's physical property. Indeed, Plaintiffs admit that, after they left Defendant Meridian's Clearwater facility, they "had in their possession a number of microprocessors" that belonged to Defendants. (FAC ¶ 53). And although these were eventually returned, Plaintiffs have not returned any other property from the Clearwater facility.

On August 2, 2017, Defendants Global Resources and Meridian filed suit against Plaintiffs in the Southern District of New York. In that case, Defendants assert claims for theft and conversion, breach of contract, breach of loyalty, misappropriation of trade secrets, and unfair competition. (Clark Dec. Ex. 1, Doc. 16 in Case No. 1:17-cv-05846 (VSB)). After Defendants filed their case in New York, Plaintiffs filed their amended complaint in this Court with claims attempting to mirror and pre-empt Defendants' claims in New York. (FAC ¶¶ 97-195).

The primary focus of Plaintiff Lefevre and Phoenix Wings' first amended complaint is their declaratory judgment claim seeking "ownership" of "intellectual property related to autonomous transportation technology." (FAC at 34 ¶ B). But the only parties that actually own specific intellectual property related to autonomous vehicles are the Defendants Global Resources and Meridian. Lincoln Satkunarajah, CEO of Defendant Meridian, has over thirty years of experience working on highway, traffic, and transportation systems and holds, among other degrees, a Masters of Science from the City University of London as well as certification as a Professional Traffic Operations Engineer in the United States. Mr.

Satkunarajah is also an inventor and owns patent rights covering foundational technology in the field of autonomous vehicles. (Clark Dec. Ex. 2; U.S. Patent App. 14/959,433). By contrast, Plaintiffs fail to identify any patents or other specific intellectual property that they own—despite their claim that Plaintiff Lefevre "is the father of low speed autonomous transportation." (FAC ¶ 24).

III. THERE IS NO SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS FOR DECLARATORY RELIEF

Plaintiffs' claims for declaratory relief (Claims 1, 2, and 3) should be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. "Jurisdiction to award declaratory relief exists only in a case of actual controversy." *American States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994).

"Unlike a Rule 12(b)(6) motion, a Rule 12(b)(1) motion can attack the substance of a complaint's jurisdictional allegations despite their formal sufficiency, and in so doing rely on affidavits or any other evidence properly before the court." *St. Clair v. Chico*, 880 F.2d 199, 201 (9th Cir. Cal. 1989) (*citing* Wright & A. Miller, FED. PRACTICE AND PROCEDURE (West), § 1350, at 550-51). "It then becomes necessary for the party opposing the motion to present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction." *Id.* ("The district court obviously does not abuse its discretion by looking to this extra-pleading material in deciding the issue, even if it becomes necessary to resolve factual disputes.").

On a motion to dismiss under Fed. R. Civ. P. 12(b)(1), the plaintiff bears the burden of establishing subject matter jurisdiction. "In effect, the court presumes *lack* of jurisdiction until the plaintiff proves otherwise." Shwarzer, et al., FEDERAL CIVIL PROCEDURE BEFORE TRIAL (Rutter 2017) at 9.77.10 (emphasis original); *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) ("It is to be presumed that a cause lies outside this [the federal court's] limited jurisdiction, and the burden of establishing otherwise rests upon the party asserting jurisdiction."). And the allegations of a plaintiff's complaint are not accepted as true. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) ("no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.").

A. Claim 1—There Is No Subject Matter Jurisdiction over Plaintiffs' Declaratory Judgment Claim Regarding "Intellectual Property"

Claim 1 of Plaintiffs' first amended complaint fails to adequately identify the "intellectual property" about which Plaintiffs ask this Court to issue a declaratory judgment. (FAC ¶¶ 98-104).

A claim for declaratory relief must be based on facts sufficient to establish an actual controversy. *Int'l Harvester Co. v. Deere & Co.*, 623 F.2d 1207, 1210 (7th Cir. 1980). The disagreement "must not be nebulous or contingent, but must have taken on a fixed and final shape so that a court can see what legal issues it is deciding and what effects its decision will have on the adversaries." *Pub. Serv. Com. v. Wycoff Co.*, 344 U.S. 237, 244 (1952); *United States v. Arnold*, 678 F. Supp. 1463, 1465-66 (S.D. Cal. 1988). The controversy must be "real, substantial, and capable of specific relief through a decree of conclusive character." *Display Research Labs. v. Telegen Corp.*, 133 F. Supp. 2d 1170, 1174 (N.D. Cal. 2001), *citing Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937).

Here, Plaintiffs ask the Court "for a declaration that Plaintiffs, and not Defendants, are the sole owners of intellectual property related to autonomous transportation technology." (FAC at 34). But Plaintiffs make no effort to describe what the "intellectual property related to autonomous transportation technology" actually is—much less to describe any legal rights they may have to it. Plaintiffs identify no patents that they own (and they own none) and they make no reference to the ownership of any copyright in the "software" or any other "intellectual property." Nor do Plaintiffs contend that they have maintained any specific "intellectual property" in confidence such that it would be afforded protection as a trade secret. As such, their declaratory relief claim should be dismissed. *Display Research Labs. v. Telegen Corp.*, 133 F. Supp. 2d 1170, 1176 (N.D. Cal. Feb. 8, 2001) (dismissing claim for declaratory judgment where declaratory judgment claimant "did not plead with any level of particularity the inventions or technology it believes DRL has misappropriated.").

1. Plaintiffs' "Software" is Based on Pirated Code

At their most specific, Plaintiffs allege that non-party Cyril Royere "was the sole owner of certain intellectual property, including software, before the time [Plaintiff] GRMC sent the non-binding term sheet." (FAC ¶ 98). But merely invoking the phrase "intellectual property" or the term "software" does not mean that Plaintiffs have any right to exclude others from using that "intellectual property." Likewise, referring to intellectual property from "before the time" the parties had any dealings utterly fails to put Defendants on notice of what Plaintiffs are alleging.

And in the case of Mr. Royere's "software," Plaintiffs' failure to specifically identify the software comes as no surprise. This is because Mr. Royere himself admitted that his software was based on code he had "pirated" from another company. In particular, on December 19, 2016, Mr. Royere sent an email to Lincoln Satkunarajah, the CEO of Meridian, admitting that "for the development of the code of robotics, I used a pirate version [of another company's software]." (Clark Dec. Ex. 3; December 19, 2016 email from Royere to Satkunarajah) (admitting "I am using this pirate version and for me it is a question of ethics" whether to eventually pay for it). Mr. Royere's admission shows that Plaintiffs themselves do not even own the "software" that they are asking this Court to declare them the owners of. And even if they could establish such ownership, Plaintiffs' generic reference to "software" fails to identify any particular "software" about which this Court should issue a declaration of ownership.

2. The Only "Intellectual Property Related to Autonomous Vehicles" is Owned by Defendants—Not Plaintiffs

As with their reference to Mr. Royere's alleged "software," Plaintiffs' reference to "intellectual property" is insufficient to meet their burden of establishing jurisdiction over their claim for declaratory relief. Unlike Plaintiffs, Defendants own significant patent rights protecting their intellectual property related to autonomous vehicles. Specifically, Mr. Satkunarajah, CEO of Defendants, owns U.S. Patent App. No. 14/959,433, which is directed to a "3D Analytics Actionable Solution Support System and Apparatus." (Clark Dec. Ex. 2). This patent application is specifically directed to the core technology needed for autonomous vehicles to operate:

> As a non-limiting example, an autonomous vehicle traveling through a geographic area is configured to implement a data update feature whereby the data received by the vehicle is used to update the accuracy of the model data objects in near real time.

(Clark Dec. Ex. 2 at 0062). This patent application was filed December 4, 2015, well before Defendants had any interaction with Plaintiffs.

By contrast, Plaintiffs have failed to identify any "intellectual property"—either in a patent or otherwise—that they own and about which this Court should issue a declaratory judgment. The only evidence of any "intellectual property related to autonomous transportation technology" before the Court shows that Defendants—not Plaintiffs—own the patent rights to such intellectual property. Before Plaintiffs can proceed with a claim for declaratory relief as to "intellectual property related to autonomous transportation technology," they should at least describe that "intellectual property" with sufficient detail to establish that it does not include the patent rights owned by Defendants. And because they fail to do so, Plaintiffs' claim should be dismissed. *Veoh Networks, Inc. v. UMG Recordings, Inc.*, 522 F. Supp. 2d 1265, 1269 (S.D. Cal. Nov. 13, 2007) (Dismissing declaratory judgment claim where plaintiff only "generally discusses their video hosting operation, that Defendant owns unspecified copyrights, and that Defendant has made unspecified threats of copyright infringement litigation," without further detail).

B. Claim 2—Plaintiffs' "Physical Property" Declaratory Judgment Claim Should be Dismissed

Plaintiffs seek a declaratory judgment that "Plaintiffs have not engaged in any theft or conversion with respect to any of Defendants' physical property." (FAC at 34 ¶ D). Plaintiffs' claim for a declaratory judgment regarding "physical property," however, suffers from the same lack of specificity as their claim related to "intellectual property." And it should be dismissed in any event because the same issues are already pending in the New York action.

1. Plaintiffs Identify No Specific "Physical Property" to Support Their Declaratory Judgment Claim

Plaintiffs cannot claim to be unaware of the "physical property" for which they are accused of theft and conversion. In the complaint in the New York action, filed well before Plaintiffs filed their first amended complaint here, Defendants specifically identified property that was illegally converted by Plaintiffs from Defendants' facilities:

> Meridian secured substantial amounts of physical equipment valued at hundreds of thousands of dollars for the Meridian facilities in Florida, including three electric vehicles from third party manufacturers for conversion to the Meridian autonomous system, two golf carts, a flatbed truck, a VMS Road and Rail Mapping System, and numerous

> embedded components, electrical and mechanical parts, electronic items, computer hardware and software, communications devices, and tools.

(Clark Dec. Ex. 1 ¶ 21; New York Complaint, August 2, 2017).

And even if the "physical property" had not been identified in the New York action, Plaintiffs are well aware of what it is because they used it in their work at Defendant Meridian's facilities and, in many cases, ordered it and received it themselves. For example, on November 13, 2016, Plaintiff Lefevre emailed to Defendant Meridian a "breakdown of my [Lefevre's] expenses" for reimbursement by Defendants. (Clark Dec. Ex. 4; Lefevre November 13, 2016 email). Listed in the "breakdown of expenses" for reimbursement is an "A[utonomous] V[ehicle] Mapping Laptop" that Lefevre purchased on October 24, 2017 and two sets of "tools" he purchased on November 1 and 3, 2017. (*Id.*) These expenses were reimbursed by Defendants on November 16, 2016 by wire transfer. (*Id.*) If Plaintiffs' seek a declaration that they did not illegally convert and misappropriate these, or other, pieces of "physical property," they should be identified with specificity.

In addition, Plaintiff Lefevre ordered and received at the Meridian facilities a "RM9000 Absolute encoder, 36.5mm diameter housing 10mm diameter solid shaft, multi-turn,4096 revolutions, 4096 steps per revolution 5 Pin, 24 bit, CANOpen output." (Clark Decl. Ex. 5, December 5, 2016 Invoice from IFM Efector to Pierre Lefevre). This device shipped on December 5, 2016 to Pierre Lefevre at the Meridian facility in Florida. (*Id.*) And it was paid for by Meridian on February 22, 2017. (*Id.*)

Plaintiffs cannot claim that they are unaware of the "physical property" they did or did not remove from Defendants' facilities. They are aware at least of the property they purchased themselves with Defendants' money and used at the Defendants' facilities. Indeed, in the first amended complaint Plaintiffs admit that they had in their possession "certain microprocessors" that they had removed from Defendants' facilities. (FAC ¶ 53). Given Plaintiffs' ability to identify this property taken from Defendants' facilities, Plaintiffs plainly have the ability to identify any other property they received from Defendants and over which they now seek a declaration of ownership. And their failure to do so warrants dismissal of their "physical property" declaratory judgment claim.

2. Plaintiffs' "Physical Property" Claim is Being Litigated in the New York Action and Should be Dismissed

Even if Plaintiffs had identified the "physical property," their declaratory judgement claim related to it should be dismissed because it is subject to an action between the parties in New York. (Clark Dec. Ex. 1 ¶¶ 29-34; New York Complaint). Where a claim is the subject of a promptly-filed suit in another federal court, "a declaratory judgment would serve no useful purpose and [i]s properly denied." *Tempco Elec. Heater Corp. v. Omega Eng'g, Inc.*, 819 F.2d 746, 749 (7th Cir. 1987).

Here, Defendants filed suit in New York alleging theft and conversion of physical property by Plaintiffs. (Clark Dec. Ex. 1 ¶¶ 29-34, New York Complaint). More than a month after that claim was filed in New York, Defendants filed their first amended complaint in this case adding their claim for declaratory judgement related to "theft and conversion" of physical property. But because that claim is properly the subject of the suit in New York, it should be dismissed from this case.

C. Claim 3—Subject Matter Jurisdiction is Not Proper for Plaintiffs' "Trade Secret" Declaratory Judgment Claim

Claim 3 of Plaintiffs' first amended complaint requests that the Court issue a "declaration that Plaintiffs have not misappropriated any trade secrets purportedly held by Defendants." (FAC ¶¶ 111-118, p. 34 at E). But as with Plaintiffs' claim related to "physical property," Plaintiffs' misappropriation of Defendants' trade secrets is squarely at issue in the New York case. (Clark Dec. Ex. 1 ¶¶ 39-45, New York Complaint). And as such, Plaintiffs' "trade secret" declaratory judgment claim should be dismissed. *Xoxide, Inc. v. Ford Motor Co.*, 448 F. Supp. 2d 1188, 1193 (CD. Cal. 2006) ("Where the declaratory judgment action is filed in anticipation of an infringement action, the infringement action should proceed, even when filed later."); *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 185 (1952) (noting that an alleged infringer cannot use the Declaratory Judgment Act to give it "a paramount right to choose the forum for trying out questions of infringement and validity."). The primary purpose of the Declaratory Judgment Act is "to avoid accrual of avoidable damages to one not certain of his rights and to afford him an early adjudication without waiting until his adversary should see fit to begin suit, after damage had accrued." *Cunningham Bros., Inc. v. Bail*, 407 F.2d 1165, 1167-1168, (7th Cir. 1969). Where a pending suit offers a "traditional remedy [that] provides the parties with the procedural safeguards required by the law to insure the availability of a proper remedy, the courts, in exercising their discretion, may properly dismiss the declaratory judgment action." *Id*.

IV. PLAINTIFFS' CLAIMS 4, 5, 7, 8, 9, AND 10 SHOULD BE DISMISSED FOR FAILURE TO A STATE CLAIM UNDER FED. R. CIV. P. 12(B)(6)

Plaintiffs' claim 4 (fraudulent inducement), claim 5 (fraud), claim 7 (breach of covenant of good faith and fair dealing), claim 8 (fiduciary duty), claim 9 (intentional interference with prospective economic advantage), and claim 10 (violation of Lanham Act, 15 U.S.C. § 1125(a)) should be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

A. Claim 4—Plaintiffs' "Fraudulent Inducement" Claim is Insufficiently Pled and Legally Defective

For its Claim 4, Plaintiff Phoenix Wings alleges "fraudulent inducement" against Defendant Global Resources. To state a claim for fraudulent inducement, a party must allege the following: (1) misrepresentation or omission; (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. *Stewart v. Ragland*, 934 F.2d 1033, 1043 (9th Cir. 1991). If a claim sounds in fraud, it must comply with the heightened pleading requirements of Fed. R. Civ. P. 9(b). *UMG Recordings, Inc. v. Global Eagle Entmt, Inc.*, 117 F. Supp. 3d 1092, 1106 (C.D. Cal. 2015). Rule 9(b) requires an identification of the parties to the alleged misrepresentations that puts defendant "on notice of the specific conduct that forms the basis of the claim against them." *Chronic Tacos Enters., Inc. v. Chronic Tacos Huntington Beach, Inc.*, 2011 U.S. Dist. LEXIS 47740, 2011 WL 1585594, at * 2 (C.D. Cal. April 26, 2011). "Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

Here, it is not clear what Plaintiff Phoenix Wings contends is the "misrepresentation or omission." Plaintiff Phoenix Wings alleges that Defendant Global Resources ("GRMC") made a "representation that the offer provided in the Non-Binding Term Sheet was made in good faith and a true reflection of GRMC's intentions." (FAC ¶ 122). As an initial matter, Plaintiffs fail to allege that GRMC breached the "Non-Binding Term Sheet." And, in any event, Plaintiff Phoenix Wings fails to identify the terms of the alleged "offer" that was the subject of the representation, who made the representation, how the representation was made, when the representation was made, and how it could be false. Moreover, when a corporation has committed a fraud—as alleged here—Rule 9(b) requires the plaintiff to "allege the names of the employees or agents who purportedly made the fraudulent representations or omissions, or at a minimum identify them by their titles and/or job responsibilities." *UMG Recordings*, 117 F. Supp. 3d at 1108 (*citing U.S. ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1051 (9th Cir. 2001)).

Because Plaintiff Phoenix Wings has failed to identify what the "offer" was, it has failed to allege that any representation by Defendant GRMC was actually false or that GRMC knew that it was false. Although "knowledge and intent can be averred generally under Rule 9(b). . . , the plaintiff should explain why the disputed statement was false when it was made" and "point to facts which show that defendant harbored an intention not to be bound by the terms of the contract at formation." *Nikoonahad v. Rudolph Techs., Inc.*, 2008 U.S. Dist. LEXIS 65912, 2008 WL 4065831, at *4 (N.D. Cal. Aug. 27, 2008). In the first amended complaint, however, Plaintiff Phoenix Wings fails to plead facts that would show with any specificity that the "offer" made by Defendant Global Resources did not, in fact, meet the requirements of the "Non-Binding Term Sheet."

Phoenix Wings' "fraudulent inducement" claim also fails as a matter of law. As noted above, "fraudulent inducement" requires that the promisee—here Phoenix Wings—acted with "justifiable reliance" on the representation. But as the first amended complaint alleges, the alleged "offer" was part of the "Non-Binding Term Sheet." (FAC ¶ 120). Plaintiffs go to great lengths to emphasize that this term sheet is not binding on the parties, describing it repeatedly as "a **non-binding** term sheet" in the first amended complaint. (FAC ¶ 36) (emphasis original). And as such, Plaintiffs cannot claim that Phoenix Wings "justifiably relied" on any "offer" contained in the Non-Binding Terms Sheet because, as Plaintiffs allege, the term sheet is "non-binding." Accordingly, Plaintiffs' fraudulent inducement claim fails as a matter of law.

B. Claim 5—Plaintiff Lefevre's Fraud Claim Does Not Comply With Fed. R. Civ. P. 9(b).

The gist of Lefevre's fraud claim is that sometime "on or about August 2016, and again on or about September 2016," "Defendants represented to Lefevre that the information he shared [with intellectual property counsel] would be used solely for the purpose of evaluating a possible transaction." (FAC ¶ 127). But like the fraudulent inducement claim, Lefevre's fraud claim does not meet the requirements of Fed. R. Civ. P. 9(b). Plaintiff must at least provide "an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). Because Plaintiff Lefevre's fraud claim fails to provide any of the required details—including what the specific "representation" was and who made it—the fraud claim should be dismissed.

C. Claim 7—Plaintiffs Provide No Details of the Alleged Breach of the Covenant of Good Faith and Fair Dealing

Plaintiff Lefevre's claim for breach of the covenant of good faith and fair dealing spans a meager four paragraphs of the first amended complaint and fails to provide notice of what is claimed. (FAC ¶¶ 139-142). As an initial matter, Plaintiff Lefevre fails to identify the contract in which "the covenant of good faith and fair dealing is implied." (FAC ¶ 140). Nor does Plaintiff Lefevre identify any conduct that allegedly breaches the covenant—other than with a vague reference to "the conduct alleged above." (FAC ¶ 141). And finally, Plaintiff Lefevre does not allege any specific damage he has suffered, other than to say that Defendants "have directly and proximately caused Lefevre damages in an amount to be proven at trial but that exceeds the jurisdictional minimum of this Court." (FAC ¶ 142). Such a threadbare pleading fails to put Defendants on notice of the facts underlying Plaintiff Lefevre's claim.

D. Claim 8—Breach of Fiduciary Duty

Conspicuously absent from the four paragraphs of Plaintiff's first amended complaint dedicated to "breach of fiduciary duty" is any explanation of why or how Defendants would owe Plaintiff Lefevre a "fiduciary duty." (FAC ¶ 144-147). And there is no identification of any specific damage suffered by Lefevre. (FAC ¶ 146). Nor is there any explanation of how the unidentified "acts of Defendants" could be characterized as "intentional, willful, and malicious." (FAC ¶ 147). Accordingly, Plaintiff Lefevre's claim for breach of fiduciary duty should be dismissed.

E. Claim 9—Intentional Interference with Prospective Economic Advantage

Like Claims 4 and 5 for "fraudulent inducement" and "fraud," Plaintiff Coast's claim 9 for intentional interference with prospective economic advantage is subject to the heightened pleading standard of Fed. R. Civ. P. 9(b). "Although claims of interference with economic advantage, interference with fiduciary relationship, and civil conspiracy are not by definition fraudulent torts, Rule 9(b) applies to 'averments of fraud,' not claims of fraud, so whether the rule applies will depend on the plaintiffs' factual allegations." *Borsellino v. Goldman Sachs Grp., Inc.*, 477 F.3d 502, 507 (7th Cir. 2007) (applying Rule 9(b) to claims for "tortious interference with economic advantage"), *cited by Am. Int'l Group, Inc. v. Bank of Am. Corp. (In re Countrywide Fin. Corp. Mortgage-Backed Secs. Litig.)*, 2013 WL 5614294 (C.D. Cal. Sept. 30, 2013).

Here, Plaintiff Coast's claim for intentional interference with prospective economic advantage is based on an "averment of fraud." Specifically, the first amended complaint alleges that "Defendants engaged in wrongful conduct by falsely claiming to MOSI and Local Motors that Plaintiffs did not own the physical and/or intellectual property." (FAC ¶ 152). The first amended complaint, however, fails to provide any details identifying what the precise false claim was (including to what "physical and/or intellectual property" it refers), who made the claim, when the claim was made, to whom the claim was made, and how Plaintiffs are aware of such information.

The first amended complaint also fails to plead facts showing that Plaintiffs' economic relationships with "MOSI" and "Local Motors" probably would have resulted in economic benefit. "Plaintiff has the burden of proving that there was the probability of economic benefit with a third party." *Golden v. Sound Inpatient Physicians Med. Grp., Inc.*, 93 F. Supp. 3d 1171, 1177 (E.D. Cal. 2015) (citing *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003)); *Mossimo Holdings, LLC v. Haralambus*, 2017 U.S. Dist. LEXIS 51451, *21 (C.D. Cal. Apr. 4, 2017) ("the law precludes recovery for overly speculative expectancies").

Here, the first amended complaint states only that there were "economic relationships that probably would have resulted in economic benefit." (FAC ¶ 149). But the first amended complaint is devoid of any facts that would identify what that benefit was, how it was probable, when it could be expected, or why it would come from the third parties identified. And as a result, claim 9 for intentional interference with prospective economic advantage should be dismissed.

F. Claim 10—The "Lanham Act" Claim Should be Dismissed

Plaintiff Coast's Lanham Act claim for "false advertising" should be dismissed because (1) it does not meet the heightened pleading standard of Fed. R. Civ. P. 9(b) and (2) Plaintiff Coast fails to establish its standing to bring a false advertising claim under the Lanham Act.

1. Plaintiff Coast's "False Advertising" Claim is Subject to Fed. R. Civ. P. 9(b)

Plaintiff Coast's Lanham Act claim is based on a claim of "false advertising" and, as such, must be evaluated under Fed. R. Civ. P. 9(b). "[T]he weight of authority [is] that Rule 9(b) applies to Lanham Act claims that are grounded in fraud." *Plan P2 Promotions, LLC v. Wright Bros.*, 2017 U.S. Dist. LEXIS 70101, *7-8, 2017 WL 1838943 (S.D. Cal. May 8, 2017); *Seoul Laser Dieboard Sys. Co., Ltd. v. Serviform, S.r.l.*, 957 F. Supp. 2d 1189, 1200 (S.D. Cal. 2013) ("District courts in the Ninth Circuit have held that the heightened pleading standard of Fed. R. Civ. P. 9(b) applies to false advertising claims and requires the plaintiff to plead the 'time, place, and specific content of the false representations,' the identities of the parties to the misrepresentation, and what about the statement is claimed to be misleading.").

Here, in Claim 10, Plaintiff Coast identifies the allegedly false advertising as the purported statement on Meridian's website that "Meridian presently has the ability to deliver to customers certain, depicted fully autonomous vehicles." (FAC ¶ 158). But no such statement appears on Meridian's website. And even if it did, the first amended complaint fails to meet the requirements of Rule 9(b) because it does not identify what the "certain" or "depicted" vehicles are. In Paragraph 92 of the first amended complaint, Plaintiff Coast states that it is the "combination of these images [on Meridian's website] and their corresponding captions [that] convey the message that Meridian presently has the ability to deliver to customers each of these vehicles in a fully autonomous state." (FAC ¶ 92). Plaintiff Coast also attaches screenshots of the website as Exhibit B to the first amended complaint. (FAC ¶ 92, Ex. B). Plaintiff Coast thus appears to identify the alleged false statement as being the message allegedly conveyed on Defendants' website as shown in Exhibit B.

But Exhibit B does not say that Meridian has "the ability to deliver to customers certain, depicted fully autonomous vehicles." The only text on the web page that says anything about what Meridian does states that "Meridian integrates autonomous systems into smart multimodal communities." (FAC Ex. B). This certainly does not say that Meridian "delivers" vehicles of any kind to customers.

Instead, it means what is says—that Meridian "integrates autonomous systems." The fact that the webpage refers to "systems" and not "vehicles" is reinforced by the title of the page and the tab under which it appears, namely, "Autonomous Systems." And, perhaps most significant, Meridian's website provides no instructions to visitors of the site as to how they could order a vehicle for delivery, what the price or specifications would be, or where and when it could be delivered. In short, there is nothing on Meridian's website to suggest that Meridian claims it can "deliver" any specific autonomous vehicle.

2. Plaintiff Coast Fails to Plead that it has Standing to Assert its Lanham Act Claim

Plaintiff Coast does not—nor could it truthfully—claim that it can deliver any sort of autonomous vehicle. And as such, it cannot establish that it has standing to bring a false advertising claim under the Lanham Act.

A plaintiff seeking to pursue a Lanham Act claim must demonstrate standing beyond the typical Article III requirements. *Lexmark Int'l, Inc. v. Static Components, Inc.*, 134 S. Ct. 1377, 1388-89 (2014). First, a plaintiff must demonstrate that it falls within the "zone of interests" protected by the Lanham Act. *Id*. "[T]o come within the zone of interests in a suit for false advertising under § 1125(a) [of the Lanham Act], a plaintiff must allege an injury to a commercial interest in reputation or sales." *Id*. at 1390. Second, a plaintiff must demonstrate that its injuries are proximately caused by a violation of the Lanham Act. *Id*. at 1390-91. Specifically, "a plaintiff suing under § 1125(a) ordinarily must show economic or reputational injury flowing directly from the deception wrought by the defendant's advertising; and that that occurs when deception of consumers causes them to withhold trade from the plaintiff." *Id*. at 1391.

Here, Plaintiff Coast makes no attempt to show that it has standing. Plaintiff Coast does not plead that it has either the technical or commercial ability to deliver autonomous vehicles to customers—and it does not. At most, Coast alleges that "it is in the business of developing, marketing, providing and licensing certain services and intellectual property that relate to autonomous transportation technology." (FAC ¶ 13). But assuming for the sake of argument that "providing and licensing" are somehow the same as "delivering," Coast only says it does so for "certain services and intellectual property." This is not the same as having "the ability to deliver to customers certain, depicted fully autonomous vehicles," which it says is the false advertising by Defendants. Nor does Coast identify any customers or potential customers whose business it allegedly lost due to Defendants' allegedly false advertising. And as a result, Plaintiff Coast fails to plead how it has suffered an injury to its commercial interests or its sales that was proximately caused by Defendants. Accordingly, Plaintiffs' Lanham Act claim should be dismissed due to Plaintiffs' failure to establish standing.

V. THIS CASE SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION UNDER FED. R. CIV. P. 12(B)(2)

Defendants move to dismiss this case under Fed. R. Civ. P. 12(b)(2) for lack of either general or specific personal jurisdiction.

A. Defendants Are Not Subject to General Personal Jurisdiction

Plaintiffs devote a single paragraph in their complaint to general personal jurisdiction and their cursory allegations are not sufficient. (FAC ¶4). "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011).

Here, Plaintiffs allege that Defendant GRMC (and not Defendant Meridian Autonomous or Defendant Meridian USA) entered into a single contract with a party unrelated to this case. (FAC ¶4). According to the first amended complaint, GRMC entered into that contract "over five years ago" and the contract had a "five (5) year term." (*Id.*) This is far from the "substantial" or "systematic" contacts with California that would support general personal jurisdiction.

Plaintiffs also allege that in a lawsuit with the same unrelated party, "defendant GRMC admitted, without qualification, that 'personal jurisdiction is appropriate over it in the State of California.'" (FAC ¶4). But the filing of an unrelated lawsuit in the forum or consenting to the jurisdiction of the forum in an unrelated case does not establish general personal jurisdiction. *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1490 (9th Cir. 1993); cited by *Tercica, Inc. v. Insmed Inc.*, 2006 WL 1626930; 2006 U.S. Dist. LEXIS 41804, *38 (N.D. Cal. June 9, 2006) ("In *Core-Vent*, the Ninth Circuit expressly rejected the argument that personal jurisdiction could be established merely because a defendant had consented to jurisdiction in California in an unrelated case and had filed its own, unrelated lawsuit in California. Indeed, it is clear from *Core-Vent* that unrelated litigation in a forum state is not a controlling factor in, or even relevant to, the general jurisdictional analysis."). And, in any event, the claims in that case were settled and it is no longer active.

Accordingly, Plaintiffs have failed to establish any "continuous and systematic" contact with California by Defendants that would support general personal jurisdiction.

B. There is No Specific Personal Jurisdiction Because Plaintiff Coast Does Not Reside in California

Plaintiffs have failed to establish that Defendants purposefully directed their activities toward residents of California and that this controversy arises out of those activities. The only party that Plaintiffs identify as having any relationship to California is Plaintiff Coast Autonomous—the other Plaintiffs reside in Florida

(Lefevre) and the United Kingdom (Phoenix Wings). (FAC ¶¶13-15). Plaintiffs do not allege that any Defendant resides in California.

As set forth in Defendants' motion to transfer under 28 U.S.C. § 1404(a)— and undisputed by Plaintiffs— there can be no real dispute that Plaintiff Coast does not actually do business at its alleged "principal place of business" in California. (Docs. 12, 13, 14, 16 and 17). Although Defendants raised this issue in their previous motion, Plaintiffs make no attempt in their first amended complaint to identify any activities that Coast performs in California or the job duties of any employees of Coast in California.

And the evidence shows that Plaintiff Coast does not actually have a presence in California. For example, when the process server tried to serve the New York complaint on Plaintiff Coast at the address it listed with the California Secretary of State as its "principal place of business," the process server was told that "Coast Autonomous was not doing business at that location." (Clark Dec. Ex. 6; (Todd Dec. ¶ 3)). Specifically, when the process server went to Coast's purported "principal place of business" in California, he discovered that "the business operating at that business was the law firm of Hickey Smith LLP," which is Plaintiffs' counsel in this case. (Clark Dec. Ex. 6; (Todd Dec. ¶ 3)). The process server returned to the address on two other occasions and was unable to serve the complaint and summons because, as noted above, he was told "Coast Autonomous was not doing business at that location." (Clark Dec. Ex. 6; (Todd Dec. ¶ 4)). The process server also was unable to serve the New York complaint at Coast's alleged "principal place of business" in California on the following individuals who are listed on Coast's website as its "Business and Legal Executives": Adrian Sussmann (Managing Director), David M. Hickey (Managing Director), Pierre Lefevre (Chief Technology Officer), Corey Clothier (Chief Operations Officer), Cyril Royere (Robotics Chief), Matthew Lesh (Chief Commercial Officer), and Christian E. Dodd

(General Counsel). (Clark Dec. Ex. 6; (Todd Dec. ¶ 1) and Ex. 7 (Coast Autonomous Website)). If Coast indeed had business operations at its purported principal place of business in California, at least one of its "Business and Legal Executives" would presumably be present at that address.

In reality, Plaintiffs' only connection to this forum is that it hired counsel here. And as such, Plaintiffs' choice of this forum smacks of forum shopping, which weighs strongly against deference to the Plaintiffs' choice of forum. "Where forum-shopping is evident, however, courts should disregard plaintiff's choice of forum." *Foster v. Nationwide Mut. Ins. Co.*, 2007 U.S. Dist. LEXIS 95240, *6, 2007 WL 4410408 (N.D. Cal. Dec. 14, 2007, Illston, J.) ("forum shopping can be inferred here based on plaintiffs' apparent eagerness to have their case tried in the Northern District rather than in the Eastern District or in Arkansas, where the lead plaintiffs reside."). And because Plaintiffs do not make any showing that Plaintiff Coast has a legitimate presence in California, Plaintiff Coast's decision to file in this Court was forum shopping that cannot support the exercise of specific personal jurisdiction over Defendants.

But even if Coast did reside in California, the allegations of the first amended complaint make clear that any connection between Defendants and Plaintiff Coast (and by extension California) would have been entirely unforeseeable to Defendants. In Paragraph 87, Plaintiffs allege that "***after*** it became evident that no deal would be consummated with GRMC and/or Meridian, Phoenix Wings, Lefevre and Royere entered into a transaction with plaintiff Coast Autonomous whereby Coast now . . . owns" the purported intellectual property at issue. (FAC ¶ 87) (emphasis added).

Defendants, however, had no role in this "transaction" and, as such, there is no way that Defendants could have foreseen being hailed into Court in California as a result of any harm to Plaintiff Coast. *Hunt v. Erie Ins. Group*, 728 F.2d 1244, 1247, 1984 U.S. App. LEXIS 24360, *8 (9th Cir. 1984) ("[Plaintiff's subsequent] decision to move to California cannot be attributed to [defendant].") *citing World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) ("the foreseeability that is critical to the due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being hailed into court there.").

Defendants could not have reasonably expected that Plaintiffs would transfer their alleged "intellectual property" to a company purportedly based in California because the alleged transfer occurred ***after*** the parties' dealings ended. And as a result, Defendants are not subject to personal jurisdiction in California.

VI. VENUE IS NOT PROPER IN THIS DISTRICT

Defendants further move pursuant to Fed. R. Civ. P. 12(b)(3) to dismiss for improper venue. Alternatively, if this Court finds that venue is improper but it does not dismiss the case, Defendants seek to transfer the case to the Southern District of New York pursuant to 28 U.S.C. § 1406(a) for consolidation with the case currently pending there between the parties ((Clark Dec. Ex. 1, SDNY Case No. 17-cv-05846 (VSB)).

A. This Case Should Be Dismissed For Improper Venue

The Court is authorized to dismiss a case in which venue is improper pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1306(a). Under 28 U.S.C. § 1391(a)(1), venue is proper in any district where a defendant "resides." Pursuant to 28 U.S.C. § 1391(c)(2), a corporate defendant, like Defendants here, "resides" in any district in which it "is subject to the Court's personal jurisdiction with respect to the civil action in question." Because, as noted above, Defendants are not properly subject to personal jurisdiction in this Court, venue is not proper under 28 U.S.C. § 1391(a)(1).

Venue can also be established under 28 U.S.C. § 1391(a)(2) in the judicial district in which "a substantial part of the events or omissions giving rise to the claim occurred." The Ninth Circuit has not addressed the current version of 28 U.S.C. § 1391(a)(2), but in analyzing the prior statute the Court held that, "for a claim based on breach of contract, the place of intended performance rather than the place of repudiation" is the proper venue. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986) (determining the "district in which a substantial part of the acts, events, or omissions occurred that gave rise to the claim" under previous Section 1391(a)).

Here, there is no basis for concluding that any part of the events giving rise to Plaintiffs' claims occurred in California. Plaintiffs fail to identify any action by any Defendant that occurred in California or any contract whose performance was intended to occur in California. Nor do Plaintiffs allege that any "intellectual property" was misappropriated in California. And as a result, venue is not proper in this district under 28 U.S.C. § 1391(a)(2) because California does not contain the judicial district in which "a substantial part of the events or omissions giving rise to the claim occurred."

Accordingly, the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406(a).

B. Alternatively, This Case Should Be Transferred Pursuant To 28 U.S.C. § 1406(a)

Should the Court determine that this action was filed in the improper venue but dismissal is not proper under Fed. R. Civ. P. 12(b)(3), 28 U.S.C. § 1406(a) requires that the Court "shall" transfer the case. In that situation, the case should be transferred to the Southern District of New York where it can be consolidated with the currently pending case (SDNY Case No. 17-cv-05846 (VSB)) between the parties.

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VII. CONCLUSION

For the reasons set forth above, Defendants respectfully request that this Court issue an order

(1) dismissing Plaintiffs' declaratory relief claims (claims 1-3) for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1);

(2) dismissing Plaintiffs' claims 4, 5, 7, 8, 9, and 10 for failure to state a claim under Fed. R. Civ. P. 12(b)(6);

(3) dismissing Plaintiffs' first amended complaint for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2);

(4) dismissing Plaintiffs' first amended complaint for improper venue under Fed. R. Civ. P. 12(B)(3); and/or,

(5) transferring this case pursuant to 28 U.S.C. § 1406(a) to the Southern District of New York.

Dated: September 19, 2017 Respectfully submitted,

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